IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10933 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RASIK @ BATKO BHANABHAI SARANG

Versus

THE STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 10933 of 2004

MR PANDYA FOR MS KRISHNA U MISHRA for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the Police Commissioner, Surat City on 14.07.2004 in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as bootlegger from 17.07.2004 in pursuance of the above said order.

2. The grounds of detention as placed on record reveal that against the petitioner, a crime came to be registered before the Umra Police Station on 24.05.2004 under the Bombay Prohibition Act, whereby it was alleged that the petitioner was found in possession of foreign liquor to the tune of 1256 bottles of foreign liquor. The detaining authority exhaustively took into consideration investigating papers of the said crime and came to the conclusion that the petitioner was dealing in storing, selling and transporting liquor knowing fully well that the consumption of the liquor is injurious to the public health. As per the detaining authority, the petitioner on account of the above material before him, was a bootlegger and his anti social activities were required to be prevented forthwith. The detaining authority reached to the subjective satisfaction that the illegal activity of the petitioner was prejudicial to the maintenance of public order and public health. The detaining authority, therefore, passed an order of detention of the petitioner, which is under challenge in this petition.

3. Learned advocate Mr.Pandya for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of, only on the issue that whether there was material placed before the detaining authority to come to the conclusion that by the activity of the petitioner, the public order was disturbed and public health was adversely affected.

5. The facts of the present case are squarely covered by the decision of the Division Bench of this Court in the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein the Division Bench of this Court, after considering many decisions of the Apex Court, came to the conclusion that merely filing of

criminal cases under the Bombay Prohibition Act against the detenu would not lead to infer that his activities were prejudicial to the maintenance of public order and adversely affecting to the public health, there must be some credible material before the detaining authority to come to the conclusion that the activity of the petitioner was affecting the public order. A line as to be drawn between "breach of public order" and "breach of law and order". The registration of a solitary crime against the petitioner under the Bombay Prohibition Act may be a breach of law and order, but that itself cannot be construed to be prejudicial to the maintenance of public order. In absence of credible material before the detaining authority, the subjective satisfaction reached by the detaining authority cannot be said to be legal, valid and in accordance with law, so far it relates to the breach of public order. In this view of the matter, the order under challenge is required to be set aside and quashed on this ground alone.

6. In the result, in view of the above discussion, this Special Civil Application is allowed. The order passed by the Police Commissioner, Surat City on 14.07.2004 against the petitioner under the PASA Act in exercise of powers conferred upon the detaining authority by virtue of Section 3(1) of the PASA Act, is hereby ordered to be quashed and set aside. The petitioner Rasik @ Batko Bhanabhai Sarang is ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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